

Filed on: 13/09/2010.

Disposed on: 25/03/2011.

DISTRICT CONSUMER DISPUTES REDRESSAL FORUM TUTICORIN.

Present: Thiru.M.Ramachandran, B.Sc., , President.

, Member – I.

, Member – II.

(Friday the 25th day of March 2011)

CONSUMER COMPLAINT.NO:59/2010.

T.Chelladurai,

S/o.Thangavel Nadar,

Door No.136/A, ,

Korampallam,

Tuticorin.

...Complainant.

..VS..

The Public Information Officer, (Tahsildar)

Taluk Office,

Tuticorin.

... Opposite party.

This complaint came before us for final hearing on 17-3-2011 in the presence of Thiru.N.Selvaraj, Advocate for the complainant and , Government Pleader for the opposite party and having stood over till this day for consideration this Forum made the following:

ORDER

This complaint has been filed under section 12 of Consumer Protection Act 1986.

1) The averments in the complaint are as follows: The UDR Patta No.254 in respect of the complainant's land bearing survey No.45/1B one acre and 25 cents stands in the name of pattadar . The complainant has filed a petition to the opposite party on 14-2-2009 along with necessary fee of Rs.10/- to furnish particulars regarding the father's name of the above under R.T.I. Act. The opposite party has received the above application on 16-2-2009 but he has not furnished the information within 30 days as required under the law. Hence the complainant has filed an appeal to the on 21-3-2009 and even then the complainant was not furnished with the above information. Hence the complainant has filed 2nd appeal to the State Information Commission on 29-4-2009. The State Information Commission has sent letter to the opposite party to furnish the information as called for by the complainant on or before 1-10-2009 and if the particular was not furnished the State Information Commission has required the opposite party and also the complainant to appear before them on 9-10-2009. Even then the opposite party has not furnished the above information. The State Information Commission sent a letter to the complainant and the opposite party on 16-4-2010 to appear before them at 11.30 a.m. on 26-4-2010. The opposite party has furnished information regarding survey No.27/1B irrelevant to the information required by the complainant on 11-3-2010 hence the complainant has once again sent a complaint to the State Information Commission and the Commission has ordered to furnish the information to the complainant on or before 28-4-2010. But till date the opposite party has not furnished the above information. Hence the complainant has sent a complaint to the State Information Commission on

22-5-2010 regarding the activities of the opposite party and in spite of that the opposite party has not furnished the above information so far. The act of the opposite parties amounts to deficiency of service. Hence the complainant has filed this complaint to direct the opposite party to pay a sum of Rs.2,00,000/- as compensation for the deficiency of service committed by him and to direct to furnish the information required by the complainant and to pay Rs.1,00,000/- as compensation for the mental agony caused to the complainant and to pay the cost of the proceedings.

2) The averments in the written version of the opposite party are as follows: This complaint is not maintainable either in law or on facts. The complainant has no locustandi to file this petition before this Forum since the complainant has filed appeal under the provisions of the RTI Act, he cannot claim any relief from this Forum. This Forum has no jurisdiction to entertain such type of complaint. Since the complainant is not a consumer he cannot file this complaint before this Forum. The complainant has required some information which is not available with the opposite party and hence the complaint is liable to be dismissed. The complainant has filed a petition under R.T.I. Act to furnish information regarding the father's name of in UDR Patta No.254 for survey No.45/1B having an extent of one acre 25 cents. As per the Government records survey No.45/16 stands in the name of , S/o.Thangaraj Nadar. The particulars required by the complainant have been sent to him under certificate of posting on 21-4-2010 and he has also received the same. The complainant has filed this complaint concealing the above fact. If at

all there is any defect in the information furnished by the opposite party the complainant can only file appeal on it. The order passed by the State Information Commission is final and hence this Forum is no jurisdiction to entertain this complaint. Hence the complaint is liable to be dismissed.

3) The points for consideration are:

1. Whether there is any deficiency in service on the part of the opposite party and if so;
2. To what relief the complainant is entitled to?

4) Points: The case of the complainant is that he has filed a petition before the opposite party under R.T.I. Act to furnish information regarding the father's name of in UDR No.254, for survey No.45/1B with an extent of one acre 25 cents. But the opposite party has not furnished the above information in spite of directions given by the State Information Commission so far. On the other hand the opposite party would contend that he has furnished the information under certificate of postings to the complainant on 21-4-2010 and the complainant has received the same and concealing the above facts, he has filed this complaint. He would further contend that if the particulars required by the complainant are not furnished within the stipulated time, the complainant can file an appeal under RTI Act and hence this Forum has no jurisdiction to entertain such type of complaints.

5) To prove the case of the complainant proof affidavit has been filed and Ex.A1 to Ex.A14 have been marked. Ex.A1 is the copy of the petition sent by the complainant to the opposite party under RTI Act. Ex.A2 is the acknowledgement

card. Ex.A3 is the copy of appeal prepared by the complainant before the RDO Tuticorin. Ex.A4 is the acknowledgement card. Ex.A5 is the copy of 2nd appeal by the complainant before the State Information Commission. Ex.A6 is the acknowledgement card. Ex.A7 is the copy of letter from the State Information Commission to the complainant as well as to the opposite party with direction to furnish the particulars required by the complainant before . Ex.A8 is the copy of reminder letter sent by the complainant to the State Information Commission. Ex.A9 is the acknowledgement card. Ex.A10 is the copy of the letter with some particulars under RTI Act from the opposite party to the complainant. Ex.A11 is the summons issued to the complainant and opposite party to appear before the State Information Commission on 26-4-2010. Ex.A12 is the copy of the proceedings of the State Information Commission dated 26-4-2010. In the above proceedings the opposite party has been directed to furnish the particulars within one week to the complainant. Ex.A13 is the copy of letter sent by the complainant to the State Information Commission. Ex.A14 is the acknowledgement card for that. On the side of the opposite party proof affidavit has been filed and Ex.B1 to Ex.B3 have been marked. Ex.B1 is the copy of particulars sent by the opposite party to the complainant under RTI Act. Ex.B2 and Ex.B3 are copy of register of thapal and certificate of postings.

6) The case of the complainant is that he has filed a petition before the opposite party to furnish particulars regarding the father's name of the pattadar in UDR Patta No.254. But in spite of directions given by the State Information Commission, the opposite party has not furnished the above particulars with bad

intention and hence he has committed deficiency of service. On the other hand the opposite party has stated that he has furnished the particulars required by the complainant and the complainant has also received the same and concealing the above fact he has filed this complaint. Ex.A1 is the copy of petition sent by the complainant under RTI Act to the opposite party. In the above letter he has required the particulars regarding the father's name of in UDR Patta No.254 for survey No.45/1B of Servaikaranmadam village. Since the particulars were not furnished, the complainant has filed 1st and 2nd appeal before the RDO Tuticorin and State Information Commission under Ex.A3 and Ex.A5 and under Ex.7 the State Information Commission has directed the opposite party to furnish the particulars to the complainant on or before 1-10-2009. Even after that, the above particulars were not furnished to the complainant. Hence he has sent reminders to the State Information Commission under Ex.A9 and Ex.A13. The State Information Commission after proper enquiry passed an order on 26-4-2010 to furnish the particulars required by the complainant within 7 days. The complainant would contend that in spite of that the opposite party has not furnished the above particulars with malafide intention. On the other hand the opposite party would contend that he has furnished the information as required by the complainant on 21-4-2010 itself and after that only the complainant has filed this complaint. He would contend that he has furnished the information to the complainant under Ex.B1. The counsel for the complainant would contend that the particulars furnished under Ex.B1 relates to the particulars required by the complainant's petition dated 26-3-2010. A mere perusal of

Ex.B1 would prove that the informations furnished by the opposite party under Ex.B1 relates to the particulars required by the complainant in the petition dated 26-3-2010.

Under Ex.A1 the complainant has required particulars only regarding the father's name of , this petition is dated 14-2-2009. The complainant has also stated in the complaint that he has filed a petition dated 14-2-2009 under RTI Act to furnish certain informations and the opposite party has not furnished the above information so far. Under Ex.A10 the opposite party has furnished some informations to the complainant for his petition dated 11-2-2009 under RTI Act. This particulars are also not related to the petition dated 14-2-2009. The State Information Commission after enquiring the complainant and the opposite party, has passed an order under Ex.A12 on 26-4-2010. The State Information Commission has directed the opposite party to furnish the particulars regarding the entries made in the UDR Patta as required by the complainant within 7 days. In spite of that, the opposite party has not furnished the above information so far. So the contention of the opposite party that he has furnished the particulars as required by the complainant in his petition dated 14-2-2009 under RTI Act does not seems to be correct.

7) The next contention of the opposite party is that this Forum has no jurisdiction to entertain such type of complaint as under the Right to Information Act the jurisdiction of Consumer Fora has been bared and this Forum has no jurisdiction as an appeal provision is provided under the RTI Act for not furnishing the information. The National Commission in its order dated 28-5-2009 in Dr.S.P.Thirumala Rao versus Municipal Commissioner, Mysore City Municipal

Corporation has held that the right to information act does not have any overriding effect on the Consumer Protection Act 1986 and also on the question of bar of jurisdiction of Courts it was held that Section 3 of Consumer Protection Act provides an additional remedy that the bar of jurisdiction of the Act is only against the Courts as also in respect of the order made under the Act. But in this case since the opposite party have not passed any order on account of which the question of bar of jurisdiction does not arise and it is a case of deficiency of service. Since the opposite party did not furnish information in time as provided under the R.T.I. Act, the complainant has approached proper authority for redressal of his grievance on account of deficiency of service. As such he was entitled to invoke the jurisdiction of the Consumer Fora. Though the RTI Act provides for penalties on the competent authority, yet the act does not provide for any remedy to the consumers who has sought information under the said Act for deficiency of service in the nature of compensation or damages for not furnishing the informations or to which they are entitled to get under the said Act. Section 3 of the Consumer Protection Act provides additional remedy in addition to the remedy provided under other act and it is not in derogation of provisions of any law. The Consumer Forum has therefore jurisdiction to entertain the complaint in respect of deficiency of service in the given facts especially when the information sought was not furnished. The competent authority was required to give information within 30 days of the application however the said information was not furnished. The complainant had approached this Forum claiming compensation, damages for deficiency of service. Even though further remedy may be available to the applicant in case information is not supplied in terms

of the Act within 30 days, there is no bar to approach the Consumer Fora for deficiency of service. The remedy under the RTI Act would take care off disciplinary action and penalty against the competent authority in not furnishing the information but no remedy is provided under the said Act to the applicant seeking information therein if information is sought is not provided resulting in deficiency of service on that count. The applicant had paid a fee of Rs.10/- for seeking the said information. Hence the case of the complainant would fall within the scope and ambit of section 2(i)(o) of Consumer Protection Act which provides that service means service of any description which is made available to potential users, which include purveying of news or supplying of other information. The complainant had availed of the service under the said Act for consideration by paying fee and had sought information under the said Act which was not supplied to him, which amounts to deficiency of service. The complainant is thus a consumer vis-à-vis information sought on payment under the said Act. Hence the contention of the opposite party that once the complainant had availed the remedy against which appeal was provided he could not maintain a complaint under the Consumer Protection Act does not seems to be correct.

8) In the circumstances stated above, we come to the conclusion that the contention of the opposite party that this Forum has no jurisdiction to entertain such type of complaints seems to be not acceptable.

9) In the circumstances stated above, we come to the conclusion that the opposite party has committed deficiency of service and hence the complainant is entitled for the relief as prayed for. We decide these points accordingly.

10) In the result, the complaint is allowed and the opposite party is directed to pay Rs.25,000/- as compensation for the mental agony and sufferings caused to the complainant and to pay Rs.3000/- towards cost of the proceedings within a period of two months from the date of this order failing which the complainant is at liberty to execute this order U/s.25 and 27 of the Consumer Protection Act 1986.

Dictated to the Steno-typist, taken and typed by him, and corrected by me and pronounced by us in the Open Forum on this the 25th day of March 2011.

Member II.

Member I.

President.

Annexure

I) List of documents marked for the complainant:

1. Ex.A1/14-2-09 : Copy of the petition sent by the complainant to the opposite party under RTI Act
2. Ex.A2/ : Acknowledgement card
3. Ex.A3/21-3-09 : Copy of the appeal prepared by the complainant before the State Information Commission
4. Ex.A4/ : Acknowledgement card
5. Ex.A5/29-4-09 : Copy of 2nd appeal by the complainant before the State Information Commission
6. Ex.A6/ : Acknowledgement card
7. Ex.A7/17-9-09 : Copy of letter to the complainant by the State Information Commission
8. Ex.A8/18-11-09 : Copy of reminder letter sent by the complainant to the State Information Commission
9. Ex.A9/ : Acknowledgement card

10. Ex.A10/11-3-10:Letter to the complainant by the opposite party
11. Ex.A11/16-4-10: Summons issued to the complainant to appear before
State Information Commission
12. Ex.A12/28-4-10: Copy of the proceedings of the State Information
Commission
13. Ex.A13/22-5-10: Copy of letter sent by the complainant to the State
Information Commission
14. Ex.A14/ : Acknowledgement card

II) List of documents marked for the opposite parties:

1. Ex.B1/ : Copy of the particulars sent by the opposite party to the
complainant
2. Ex.B2/ : Xerox copy of register of thapal and certificate of
postings
3. Ex.B3/ : Xerox copy of register of thapal and certificate of
postings

Member II.

Member I.

President.

31/03/2011